

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* A. McDOWELL, Minor.

UNPUBLISHED  
April 19, 2016

No. 329348  
Kalamazoo Circuit Court  
Family Division  
LC No. 2013-000001-NA

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Before: TALBOT, C.J., and HOEKSTRA and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right the July 30, 2015 order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (c)(ii) (failure to rectify other conditions), (g) (failure to provide proper care and custody), (j) (reasonable likelihood that child will be harmed if returned to the parent), and (l) (parent's rights to another child terminated under section 2(b)). Because respondent was not denied reasonable efforts toward reunification, we affirm.

Respondent has four children. Her rights to her oldest child, TP, were voluntarily terminated in Washington State in 2009. Later, in Michigan, in April of 2014, respondent's rights to two other children, MM and JM, were terminated under MCL 712A.19b(3)(c)(i), (c)(ii), and (g), because of, among other things, respondent's substance abuse and instability, her chronic lack of housing, and her lack of income. The minor child at issue in this case is respondent's youngest child, AM, who was born in May 2014.<sup>1</sup> AM was removed from respondent's custody shortly after her birth because of respondent's prior terminations and because of her failure to rectify the conditions that led to those terminations. In particular, respondent lacked suitable housing for AM and she had ongoing substance abuse issues. Respondent pleaded guilty to the allegations in the petition, and the trial court assumed jurisdiction over AM.

Following the adjudication, respondent received numerous services and referrals for programs aimed at reunification, including drug screens, substance abuse treatment, Family Dependency Treatment Court (FDTC), Behavioral Health Services, parenting time with AM,

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<sup>1</sup> AM's father was never identified, and thus he is not a party to this appeal. Likewise, we note that respondent's rights to TP, MM, and JM are not at issue on appeal.

parenting classes, programs such as the Supportive Visitation Program, housing assistance, counseling and mental health treatment, transportation assistance, and employment assistance through Michigan Works. Despite these available services, respondent failed to address the barriers to reunification. She was incarcerated for parts of the proceedings pertaining to AM, including jail time for failing to comply with FDTC requirements. She failed to maintain suitable housing or employment; and, despite brief periods of sobriety, she failed to resolve her substance abuse issues. Indeed, respondent's efforts during the proceedings were unreliable—she missed drugs screens, failed to complete programs, failed to follow-up on referrals, she was eventually discharged from FDTC for failing to meet its requirements, and she missed numerous parenting time visits with AM.

Ultimately, on July 30, 2015, more than a year after AM's removal from respondent's care, the trial court terminated respondent's parental rights. At that time, respondent still lacked stable housing and income to care for AM, and she continued to struggle with substance abuse issues. The trial court found statutory grounds for termination under MCL 712A.19b(3)(c)(i), (c)(ii), (g), (j), and (l), and concluded that termination was in AM's best interests. See MCL 712A.19b(5). Respondent now appeals as of right.

On appeal, respondent does not dispute that statutory grounds for termination were proven or that termination of respondent's parental rights was in AM's best interests. Instead, respondent contends that the Department of Health and Human Services (DHHS) deprived respondent of due process by failing to provide meaningful reunification services as required by MCL 712A.19a(2).

We review a trial court's decision to terminate parental rights for clear error. MCR 3.977(K); *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). Whether the proceedings complied with respondent's right to due process is a constitutional question reviewed de novo. *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). Regarding the adequacy of the services provided by DHHS, typically we review for clear error the trial court's finding that reasonable efforts were made to preserve and reunify the family. See *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). However, respondent failed to object to the service plan in the trial court or to indicate that the services provided were somehow inadequate, meaning that her claim is unpreserved and reviewed for plain error. See *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012); *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011).

Under MCL 712A.19a(2), except in certain circumstances, before termination of parental rights, “[r]easonable efforts to reunify the child and family must be made in all cases[.]” See *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Notably, under MCL 712A.19a(2)(c), “the prior involuntary termination of parental rights to a child's sibling is a circumstance under which reasonable efforts to reunite the child and family need not be made.” *In re Smith*, 291 Mich App 621, 623; 805 NW2d 234 (2011). In this case it is undisputed that respondent's parental rights to MM and JM were involuntarily terminated in 2014. Given these circumstances, the DHHS had no obligation to make reasonable efforts to reunify the family. See MCL 712A.19a(2)(c); *In re Smith*, 291 Mich App at 623. Thus, there is no merit to respondent's claim that the DHHS deprived respondent of due process by failing to provide reunification services.

In addition, we note briefly that, despite the involuntarily termination of respondent's rights to AM's siblings, a circumstance which relieved the DHHS of its obligation to provide services under MCL 712A.19a(2), the DHHS in fact provided respondent with numerous services for more than a year. When the DHHS fulfills its responsibility of providing services, "there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App at 248. Yet, in this case, respondent largely failed to participate in, and wholly failed to benefit from, the wide variety of services provided. Cf. *id.* After more than a year, despite the proffered services, she still had not made progress toward resolving her housing, employment, and substance abuse issues. In these circumstances, the services provided were more than adequate, respondent was not denied her right to due process, and the trial court did not clearly err by terminating her parental rights.

Affirmed.

/s/ Michael J. Talbot  
/s/ Joel P. Hoekstra  
/s/ Douglas B. Shapiro